

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WILLARD F. BREHM, Trustee of the)
Willard F. Brehm Trust, GLADYS M.)
BREHM, Trustee of the Gladys M.)
Brehm Trust, ALVENA T. FROST,)
Alvena T. Frost, Trustee of the Alvena)
T. Frost Trust, ARLIN STUTHEIT,)
RICHARD HAUBERG, ELAINE)
HAUBERG, GARY RADEMACHER,)
and PAMELA RADEMACHER, on)
behalf of themselves and all others)
similarly situated,)

Plaintiffs,)

v.)

CAPITAL GROWTH FINANCIAL, Inc.,)
REBECCA ENGLE, BRIAN)
SCHUSTER, ENGLE & SCHUSTER)
FINANCIAL, Inc., AMERICAN)
CAPITAL, Corporation, ROYAL PALM)
CAPITAL GROUP, Inc., CAPITAL)
GROWTH EQUITY FUND I, LLC, ALAN)
JACOBS, MICHAEL JACOBS,)
GERALD PARKER, JOHN BOYCE,)
GERALDINE MAGALINCK, PATRICK)
HARRINGTON, PETER KIRSCHNER,)
and STARK WINTER SCHENKEIN &)
CO., LLP,)

Defendants.)

8:07CV254

ORDER

This matter is before the court on a number of motions:

1. A joint motion filed by plaintiffs and defendants Capital Growth Financial, Inc. and Capital Growth Equity Fund I, L.L.C. (the "Capital Growth Defendants"), and defendants Alan Jacobs and Michael Jacobs (the "Jacobs Defendants"), Filing No. 83, for an extension of time in which to respond to the Capital

- Growth and Jacobs Defendants' motion to dismiss, Filing No. 64;
2. A motion for Leave to File Oppositions and for Enlargement of Time by Rex Weldon, Bonnie Post, William Sheldon, Jill Schuneman and David Buckley, Filing No. 82;
 3. A joint motion filed by plaintiffs and defendant Gerald Parker regarding Plaintiffs' Time to Respond to Defendant Gerald Parker's Motion to Dismiss, Filing No. 138;
 4. A motion to Dismiss the Complaint as to defendant Peter Kirschner's, Filing No. 142.

Also pending in this case are defendant Stark Winter Schenkein & Co.'s ("Stark") motion to dismiss, Filing No. 22. The parties are currently conducting limited discovery regarding that motion and separate orders have been entered regarding the schedule of responses to that motion, Filing Nos. 128 and 145.

This action involves the same parties and transactions as another action for securities fraud, brought pursuant to the Securities Act of Nebraska, Neb. Rev. Stat. § 8-1102, that was removed from state court. See *Brehm, et al. v. Capital Growth Financial, et al.*, No. 8:07-cv-315 (D. Neb.). The court stayed responses to the above-referenced motions while it determined the motions to remand filed in that case, Filing No. 88. The court provided that after the resolution of the remand motions in the 07-cv-315 matter, the court would enter a second order regarding response deadlines. On January 8, 2008, the magistrate entered a report and recommendation which recommended remanding case number 07-cv-315 to the state court. Thus, the court determines that the plaintiffs shall respond to Capital Growth Financial, LLC, Capital Growth Equity Fund, I, LLC, Alan Jacobs and Michael Jacobs's motion to dismiss, Filing No. 64; Gerald Parkers's motion to dismiss, Filing No. 133; and Peter Kischner's motion to dismiss, Filing No. 142, by January 29, 2008.

Additionally, certain members of the putative class of plaintiffs filed a motion for appointment as lead plaintiffs and a motion for leave to respond to defendants' motion to dismiss and to extend time to respond. Filing Nos. 42 and 82. The magistrate entered an order approving the Stipulation Regarding Appointment of Lead Plaintiff and Approval of Selected Lead Counsel, Filing No. 111, mooted Filing No. 42. Therefore, Filing No. 82 is also moot.

The parties should be aware that the court is not inclined to grant additional extensions as to the motions addressed in this order.

IT IS HEREBY ORDERED:

1. Plaintiffs will have until January 29, 2008, to respond to Capital Growth Financial, LLC, Capital Growth Equity Fund, I, LLC, Alan Jacobs and Michael Jacobs's motion to dismiss, Filing No. 64; Gerald Parker's motion to dismiss, Filing No. 133; and Peter Kischner's motion to dismiss, Filing No. 142;
2. Filing Nos. 82 and 138 are dismissed as moot.

DATED this 8th day of January, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge